

# Outlet Village Shops Development Agreement

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2008 MAY 9 PM 12 37

**DEVELOPMENT AGREEMENT**

This Agreement is entered into as of this 11<sup>th</sup> day of April, 2008, by and between CPG Partners, L.P., a Delaware limited partnership, ("the Developer") and the Town of Merrimack, acting by and through its Town Manager ("the Town") for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged (the "Agreement"), and it represents the understanding between the parties with respect to the contributions and commitments of the Developer with respect to mitigating traffic, environmental, public safety, growth management and other impacts arising from the development of an Outlet Village Shops project ("the Project") off of Industrial Drive in the Town of Merrimack, in an area more particularly shown on Exhibit A, Master Site Development Plan ("the Site").

**1. GENERAL**

1.1 The Developer shall comply with applicable rules, regulations and ordinances of the Town of Merrimack, State of New Hampshire, and Federal Agencies as they apply to the construction, maintenance and operation of the Project, including, without limitation, the Town of Merrimack Zoning Ordinance and Building Code, the Subdivision and Site Plan Regulations of the Merrimack Planning Board, the Conditional Use Permit and Site Plan Approval granted by the Merrimack Planning Board, and the State Building and Fire Code.

1.2 The terms of this Agreement shall be incorporated into the conditions of any Site Plan Approval issued by the Planning Board for any portion of the Project, and shall be binding upon the Developer and any successor in interest to the Project, as provided in Sections 15.5 and 15.10 of this Agreement. To the degree there are contained herein references to the Developer's obligations during the Site Plan approval process, such references shall not be construed as relieving the Developer from any other obligation or condition that may otherwise be lawfully imposed during the Site Plan approval process.

1.3 Any and all agreements, representations and/or stipulations made by the Developer, its agents or consultants during either the Conditional Use Permit (CUP) or Site Plan Review processes, including, but not limited to, the CUP Conditions of Approval-Implementation Matrix, are hereby incorporated by reference and shall be binding and enforceable upon the Developer in accordance with Section 15.3 below.

**2. APPROVAL PHASE RESPONSIBILITIES**

2.1 Developer Reimbursement of Legal and Consultant Expenses. During the Conditional Use and Site Plan Review processes the Developer shall be responsible for reimbursing

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the Town for all consultant and legal services incurred to coordinate the hearing process and review/process the relevant application(s) and supporting consultant reports. Further, in consideration of the Town's anticipated agreement to provide expeditious reviews and/or inspections of the Project during the preconstruction and construction phases, the Developer shall be responsible for reimbursing the Town for all plan reviews and/or site inspections undertaken by Town employees or department heads, on a per diem basis, in accordance with adopted fee schedules or, in the absence of such fee schedule(s), as required to fully reimburse the Town for the actual costs incurred for the services provided. This provision shall not be construed to apply to expenses incurred by the Town that are customarily offset by permit fees. Further, nothing herein shall be construed as relieving the Developer of any other responsibilities set forth in Town of Merrimack's Zoning Ordinance, Subdivision or Site Plan Regulations or as may otherwise be permitted or required by law.

### 3. CONSTRUCTION PHASE RESPONSIBILITIES

3.1 Developer Payment for Inspection Services. In addition to the normal fees payable to the Town of Merrimack for building permits and other permits, the Developer shall assume reasonable expenses of ongoing inspection and review of the construction process and compliance with all applicable conditions and requirements of the Zoning Ordinance, the Conditional Use Permit, and Site Plan Approval. Prior to the issuance of a building permit, the Town shall provide to the Developer an initial estimate of the cost of inspection and review services and the Developer shall deposit said amount in an escrow account. The Town shall draw from the escrow account as necessary to pay for inspection and review services, and shall provide additional estimates to the Developer when the balance of the escrow account is reduced to a point below the anticipated requirements for the next month. The Developer shall then deposit further amounts equal to such estimates subject to the terms of this Section. The Town agrees to use monies deposited under this Section for the purpose of retaining qualified professionals to review the Project.

3.2 Following the issuance of a final Occupancy Permit for the Project, any funds remaining in the escrow account shall be returned to the Developer.

3.3 Construction Access Traffic and Site Control. During construction of the Project, the Developer shall impose on each of its contractors a requirement that all construction trucks and heavy equipment accessing the Site shall use the F.E. Everett Turnpike and Industrial Drive whenever possible. The foregoing clause shall not apply to any trip

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1 originating or ending at a place of business within the Town of Merrimack. An  
2 appropriate dust control/tire washing program shall be implemented during construction  
3 as part of the Site Plan approval process.

4 3.4 Construction Phase Traffic Control. During the construction phase, the Developer shall  
5 pay the Town a per diem for all traffic control activities provided by the Town of  
6 Merrimack in accordance with Section 7.4 below. For the purposes of this agreement  
7 “operating hours” shall include “construction hours.”

8 3.5 Controlled Blasting Plan Required. The Developer shall carry out the Project in  
9 compliance with the Controlled Blasting Plan approved by the Planning Board during the  
10 Site Plan approval process. The objective of the Controlled Blasting Plan is that all  
11 properties with occupied residential dwellings within 1000 feet of the blasting activities  
12 which are identified on the attached list of potentially affected parties, a copy of which is  
13 attached hereto as Exhibit B (collectively defined as the “Abutters”) are protected from  
14 any blasting to remove rock located on Site as more specifically set forth in the  
15 Controlled Blasting Plan. Any blasting activities on the Site shall be carried out in  
16 compliance with any and all applicable laws and with the additional specifications set  
17 forth in the Controlled Blasting Plan that, at a minimum, shall include the following  
18 terms and conditions:

19 (a) A copy of the Controlled Blasting Plan shall be delivered to the Town.

20 (b) Developer shall carry or, cause its blasting contractor to carry, liability insurance  
21 and/or bonding in an amount not less than \$5,000,000.00 to cover any and all  
22 potential property damage resulting from such blasting.

23 (c) All Abutters shall be given seven (7) days advance notice of the initial  
24 commencement of scheduled blasting activities.

25 (d) Pre-blast surveys shall be performed on all principal structures on properties located  
26 within 1000 feet of any blasting activities. Post blasting surveys will be conducted on  
27 any property belonging to an Abutter where damage is claimed.

28 (e) Developer or its agents shall cause repair or replacement of any and all damage to the  
29 Abutters property directly resulting from the blasting activities in accordance with the  
30 terms and conditions of any insurance policy and/or bonding secured to cover such  
31 damage. All repairs and replacements will be made in a professional and  
32 workmanlike manner.

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(f) Unless otherwise specifically approved by the Town of Merrimack, all blasting shall be done in strict conformance with the Controlled Blasting Plan. Notwithstanding, the use of ANFO is strictly prohibited from use in any area deemed to be part of the recharge area for any existing public water supply or well.

(g) Unless otherwise approved by the Town of Merrimack, blasting and crushing operations shall not be conducted outside of the hours of 9:00AM and 4:00PM, Monday through Friday.

(h) The Controlled Blasting Plan shall include a requirement that all blasting operations shall be conducted in consultation with a licensed geotechnical engineer. The Controlled Blasting Plan shall conform to the specific representations made during both the Conditional Use Permit and Site Plan review processes including, but not limited to, the representations set forth in the report of Emery & Garrett Groundwater, Inc., dated December 20, 2007, and the response of Vanasse, Hangen, Brustlin, Inc., dated January 9, 2008.

3.6. Blasting Permit. The Applicant shall provide to the Community Development Department a copy of any Blasting Permit issued by the Fire Chief prior to the commencement of any blasting activity.

3.7 Construction Management Plan. The Developer shall prepare a Construction Management Plan during the site plan approval process that shall address all construction issues identified during site plan approval including, but not limited to, noise mitigation/management, environmental and sedimentation controls, protection of groundwater, construction vehicle routes/controls, site security, abutter notifications, litter and debris removal/disposal, hours of construction operation, safety, temporary buffer enhancements, traffic controls, blasting and crushing operations, storage of hazardous materials, smoke and dust controls, temporary lighting/electrical services, emergency management and communications, and the overall time schedule for the principal construction activities.

3.8 Fire Department Calls for Service During Construction Phase. The Developer shall reimburse the Town for calls for service at the Site during the construction phase related to the construction of Project involving the need for a fire engine from and after the point at which the call(s) exceed 25 during any twelve (12) month period. Such reimbursement shall be in accordance with the reasonable costs incurred by the Town as determined by the Merrimack Fire Department. Nothing herein shall be construed to prohibit the Town

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1 for charging for ambulance calls in accordance with the adopted policies and practices of  
2 the Merrimack Fire Department.

3 **4. INFRASTRUCTURE INSPECTIONS**

4 4.1 Public Agencies to be Notified. During Site Plan approval, the Applicant or his designee  
5 shall consult with the applicable public agencies to develop an Inspection Plan and  
6 timetable for the Project. For the purposes of this section, the term “applicable public  
7 agencies” shall mean the Town of Merrimack Community Development Department,  
8 Department of Public Works, Conservation Commission, Merrimack Village District, and  
9 others as designated by the Community Development Department. The Inspection Plan  
10 shall, at a minimum, require that the Applicant notify the applicable public agencies at  
11 least forty-eight (48) hours prior to the need for any required inspections. The applicable  
12 public agencies may request, during Site Plan Approval, that additional reasonable  
13 benchmarks be established as part of this Inspection Plan/Policy. Inspection approvals do  
14 not constitute acceptance of such roadways, utilities or other infrastructure improvements  
15 by the Town. The Developer shall reimburse the Town of Merrimack for all reasonable  
16 costs for construction inspections undertaken pursuant hereto.

17 **5. SITE VISITS**

18 5.1 Request of Town to Enter Upon Site. From time to time the Town may request a site  
19 visit to the site. The date and time for such visits shall be satisfactory to both the Town  
20 and Applicant. Notwithstanding the foregoing, nothing herein shall be construed to  
21 prevent or impair the Town from undertaking any site visit or inspection, with or without  
22 notice, which is otherwise permitted by law.

23 5.2 Request to Delineate Limits of Work. During the Board’s consideration of the  
24 developer’s Site Plan application, the Planning Board may request that any proposed  
25 development be clearly flagged or otherwise delineated prior to any proposed and agreed  
26 to site visit. The Board may also request a “balloon” test or other test in the field  
27 sufficient to illustrate the proposed height and location of a proposed building, sign or  
28 structure in relation to the surrounding area.

29 **6.0 TRAFFIC MITIGATION**

30 6.1 Mitigation projects to be completed by the Developer. During the course of Site Plan  
31 approval, a Traffic Mitigation Plan shall be developed with input from the Merrimack  
32 Police Department, the Town of Merrimack’s Traffic Consultants, New Hampshire

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1 Department of Transportation, and any/all regional agencies impacted by the  
2 development proposal. The Traffic Mitigation Plan shall identify any and all traffic  
3 mitigation measures reasonably required to adequately address the anticipated changes in  
4 traffic volume and/or patterns. The Traffic Mitigation Plan shall include, but shall not be  
5 limited to: Identification of any and all road improvements, upgrades, changes in  
6 signalization, drainage improvements or enhancements, modification of existing signal  
7 loops or timing sequences, or any other reasonably required changes in the overall  
8 transportation system necessary to adequately address the anticipated changes in traffic  
9 volume and/or patterns (herein referred to collectively as “traffic mitigation measures”).  
10 The Traffic Mitigation Plan shall be specifically approved by the Merrimack Planning  
11 Board and incorporated into the Site Plan approval. In the event the State of New  
12 Hampshire requires a revision of traffic mitigation measures following the approval of  
13 the Site Plan, or the Developer requests any such revision, the Developer agrees to notify  
14 the Planning Board of such proposed revisions, and if such proposed revisions have a  
15 substantial negative impact on the traffic mitigation measures agreed to or stipulated  
16 during the Conditional Use Permit or Site Plan Approval processes, to submit to the  
17 Planning Board a revised Traffic Mitigation Plan mitigating such impacts.

18 6.2 Follow-On Traffic Studies. Upon the application for Certificates of Occupancy for  
19 Phase 2, the Developer shall fund an account held by the Town in the amount of \$10,000  
20 to be used for follow-on traffic studies by an independent traffic consultant hired by the  
21 Town.

22 6.3 Ongoing responsibilities:

23 (a) Delivery Traffic Plan. The Developer shall encourage each of its tenants, tenants’  
24 employees, and successors and assigns, to have all delivery vehicles utilize the F.E.  
25 Everett Turnpike to access the Project. This requirement shall not apply to trips  
26 originating or ending at a business located in Merrimack, nor to deliveries of small  
27 cargoes made by common carriers such as UPS or Federal Express as part of a route  
28 delivery that in its ordinary course includes residences and businesses located within the  
29 Town of Merrimack.

30 (b) Developing the Traffic Management Plan. The Developer shall cooperate with  
31 appropriate officials of the Town in developing traffic contingency plans for significant  
32 peak traffic periods and/or extraordinary events associated with the Project, which may,  
33 in accordance with Section 7.4 below, include funding by the Developer for police traffic  
34 details.

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## 7. PUBLIC SAFETY

7.1 Developer Payments for Public Safety Services. The Developer shall, prior to issuance of an Occupancy Permit for the Project, make an initial payment for Public Safety as set forth in Section 14.1 below.

7.2 Private Security on Site. The Developer agrees to provide private security service to the Site on an as-needed basis as particular circumstances may warrant.

7.3 Police Area on Site. The Developer shall provide an area for the Merrimack Police Department to support the anticipated public safety services to be provided by the Department. The space shall be constructed to reasonable standards and in accordance with the proposed use of the space in question. Cost for and utilities, including heat, water, electricity, and waste disposal shall be the responsibility of the Developer. The area shall be in a location satisfactory to the Town. The details of the use and layout will be determined during Site Plan Approval.

7.4 Additional Police. Developer will pay for additional police personnel required at the project during operating hours, including traffic details at the Project's entrance. During peak shopping seasons and/or shopping days, Developer will pay for an additional police patrol in the area of the project on an as needed basis. The need for additional police personnel for circumstances directly related to the Merrimack Premium Outlets shall be mutually agreed upon by the Merrimack Police Chief or designee and the Merrimack Premium Outlets' General Manager or designee at the sole expense of the Merrimack Premium Outlets. In the event of an emergency situation relating to the operation of the Merrimack Premium Outlets, the Merrimack Chief of Police reserves the right to assign police personnel at his sole reasonable discretion at the Merrimack Premium Outlets' expense. Additionally, the developer shall subsidize the costs associated with an additional Police vehicle for its time required at the project for any of the aforementioned police operations on a per diem basis. Work performed shall be billed on a weekly basis to the developer or its designated management company on a detailed basis, based upon the Town's then usual billing rate for such police details.

## 8.0 STORMWATER MANAGEMENT

8.1 Stormwater Management Plan. A Stormwater Management Plan shall be developed during the Site Plan Review process. Any Stormwater Management plan shall conform to the specific representations made during both the Conditional Use Permit and Site Plan Review Processes including, but not limited to, the representations set forth in the report



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of Emery & Garrett Groundwater, Inc. dated December 20, 2007 and any amendments or revisions thereto. Further such plan shall also include any terms and conditions referenced in the report of Normandeau Associates, Inc., dated November 16, 2007, and the response of Vanasse, Hangen, Brustlin, Inc., dated December 10, 2007.

8.2 Provisions for Parking Lot Maintenance. Snow storage is to be provided on-site, primarily on impervious surfaces, except (i) during peak periods (November 1 – January 1) or (ii) exceptional storms, in which event the Developer may or may not elect to utilize off-site storage. Snow-melt runoff is to be directed towards catch basins. The Developer agrees to use calcium chloride or such other substitute for sodium chloride as may be acceptable to the Town, Developer and the MVD for purposes of snow removal treatment. Specifically, parking lot maintenance shall conform to the specific representations made during both the Conditional Use Permit and Site Plan Review Processes including, but not limited to, the representation contained in the report of Normandeau Associates, Inc., dated November 16, 2007, and the response of Vanasse, Hangen, Brustlin, Inc., dated December 10, 2007

## 9. LIGHTING

9.1 The Developer shall comply with the lighting hierarchy developed during the Site Plan Approval process such that site lighting will not create unreasonable impacts on abutting properties.

## 10. NOISE

10.1 Noise Mitigation Plan. The Developer shall comply with the noise standards established for the use during the Conditional Use Permit and Site Plan Review processes. The Developer shall prepare a Noise Mitigation and Management Plan that shall assure that the use will not have unreasonable impacts on the abutting properties, both residential and commercial. The term “unreasonable” shall be governed by accepted industry standards and prevailing practices and/or specifications. Notwithstanding, the noise standards shall not exceed those specified in the report of KM Chng Environmental dated September 28, 2007, and any amendments thereto.

10.2 Verification of Compliance with Noise Standards. In order to verify compliance with the performance standards regarding noise impacts from the Project, at the Town’s reasonable request, the Developer shall, during the construction phase and once during the first six months following opening of the Project to the public, engage a competent engineering firm to make measurements and analyze noise levels in reference to any

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particular performance standards established during either the Conditional Use Permit or Site Plan Approval processes. Nothing herein shall be construed as limiting the Town's ability or authority to perform normal noise monitoring otherwise permitted by law.

## **11. LANDSCAPING AND SCREENING**

**11.1** Ongoing Maintenance of Buffer Zone. The Developer shall prepare a plan and program for the management of the buffer area on the perimeter of the Project, as designated on the site plan as approved by the Planning Board ("Buffer Maintenance Plan"). The goal of the Buffer Maintenance Plan will be to maintain the existing buffer for its effectiveness primarily as a visual screen. The Town and the Developer acknowledge that the purpose of this provision is to maintain the integrity of the visual buffer by reasonable means and undertake to cooperate to assure its application with due concern for balancing the accomplishment of this purpose with reasonable expenditures.

## **12. UTILITIES AND SERVICES**

**12.1** Solid Waste Removal. The Developer shall contract for solid waste removal at the Developer's expense. In the event that the Town of Merrimack is required to provide solid waste removal for any reason, including but not limited to any applicable law or regulation or failure of the Developer or Operator to properly deal with such waste, the Developer agrees to pay the Town for any expenses arising directly from and reasonably attributable to the Project.

## **13. OTHER OPERATING REQUIREMENTS**

**13.1** Employee and Patron Parking. The Developer shall take all reasonable efforts to notify and discourage all patrons of the Project from using on-street parking areas. Employees shall park in designated areas of the Project as approved by the Planning Board or at an approved off-site location. No parking will be permitted on public streets. Nothing herein shall be construed to require the Developer to individually enforce unauthorized off site parking by patrons.

**13.2** Taxation. For the purposes of ad valorem taxation during the construction phase of the project, the parties agree that the assessed value shall be calculated based upon the fair market value of the real estate and improvements as of April 1 of the then tax year.

**13.3** Medical Evacuations. The Developer agrees to prepare an emergency evacuation plan that will allow a helicopter evacuation for emergency medical situations.

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1    **14.    SCHEDULE OF IMPACT MITIGATION PAYMENTS**

2    14.1    Public Safety Mitigation (one time payment)

3            Non refundable Fire Department Capital Improvements, and Equipment  
4            Contribution.....\$650,000.00

5            The Town and Developer agree that these funds shall be placed in an appropriate Fire  
6            Capital Reserve Account. The Developer agrees that this contribution shall not be  
7            construed as an impact fee.

8    14.2    Application. Nothing herein shall be construed to relieve the Developer from any  
9            other obligation or responsibility set forth in this agreement.

10   **15    MISCELLANEOUS**

11   15.1    Documentary Production. Concurrent with the presentation of this Agreement, the  
12            Developer shall provide the following documentation:

13            (a) Opinion of counsel has been obtained from the Developer's Counsel that the  
14                        execution of this Agreement has been duly authorized and is binding upon the party  
15                        executing such document.

16   15.2    Forbearance from Suit. Developer shall forego any actions at law or equity attempting to  
17            contest the validity or prevent the enforceability of any provisions of this Agreement and  
18            shall procure written acknowledgment that such forbearance shall bind any successor or  
19            assign. Such forbearance shall not preclude the Developer from bringing any action for  
20            breach of contract on the part of the Town for acts of intentional misconduct on the part  
21            of the Town with respect to matters contemplated herein.

22   15.3    Remedies. Without limiting the Town's remedies, the parties acknowledge that the  
23            approvals obtained through the Conditional Use Permit or Site Plan Review processes  
24            were predicated upon the terms and conditions of this agreement along with the other  
25            agreements, representations and stipulations made by the Developer, its agents or  
26            consultants, during either the Conditional Use Permit or Site Plan Review processes.  
27            Accordingly, the Town shall have any rights that it might have at law or in equity in  
28            connection with the enforcement of the terms and conditions of this agreement, and the  
29            underlying representations, agreements, approvals and stipulations, including, but not  
30            limited to:

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- 1 (a). Revocation of site plan approval;
- 2 (b). Revocation of conditional use permit;
- 3 (c). Revocation of occupancy permits;
- 4 (d) Commencement of legal proceedings, including request for exparte injunctive relief;
- 5 (e). Withholding any pending permits or approvals;
- 6 (f). Action for specific performance;
- 7 (g). Completion of any improvements and reimbursement of any expenses so incurred;
- 8 (h) Attachment and lien execution;
- 9 (i). Calling any bonds or security pledged to ensure complete and proper performance;
- 10 and
- 11 (j) Any other remedy permitted by law.

12 15.4 Costs of Enforcement. The Developer agrees to reimburse the Town for any and all  
13 reasonable costs incurred, including attorney's fees and expert/consultant costs, related to  
14 the Town's enforcement of any of the terms or conditions of this agreement and/or any of  
15 the representations, agreements or stipulations made during the Conditional Use Permit  
16 or Site Plan Review processes.

17 15.5 Successors and Assigns.

18 (a) Except as provided for herein, all terms of this Agreement shall bind any successor or  
19 assign of this Agreement or any successor or assign of land within the Site.

20 (b) The obligation to make the payments set forth in the Schedule of Impact Mitigation  
21 Payments shall not be assigned to nor treated as assumed by any entity that acquires a fee  
22 interest in any of the land area within the Site (a "New Entity"), but rather such  
23 obligations shall remain the responsibility of the Developer and its successors and assigns  
24 which expressly assume the same, unless otherwise consented to in writing by the Town,  
25 the Developer and any New Entity.

26 15.6 Interest in Land. The Developer covenants that at such time as it, or a successor or assign  
27 that has specifically and in writing acknowledged the terms of this Agreement, shall

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1       acquire title to all land encompassed by the Outlet Village Shops Conditional Use Permit,  
2       the Developer or such successor or assign shall record this document. In the event that the  
3       Developer, or its successor or assign, is unable or unwilling to acquire title to all land  
4       encompassed by the Outlet Village Shops Conditional Use Permit, the Developer shall  
5       immediately notify the Town of its inability or unwillingness to acquire title. Town  
6       reserves the right to rescind the CUP approval if title is not obtained within five (5) years.  
7       Additionally, this paragraph does not apply to or preclude Developer from selling the pad  
8       sites or out-parcels.

9   15.7   Notices. Notices, when required hereunder shall be deemed sufficient if sent registered  
10       mail to the parties at the following addresses:

11       Chelsea Properties: Chelsea Property Group

12                               Attention: General Counsel and Vice President - Development

13                               105 Eisenhower Parkway

14                               Roseland, NJ 07068-1029

15       Town Merrimack: Town of Merrimack

16                               8 Baboosic Lake Road

17                               P.O. Box 940

18                               Merrimack, NH 03054

19   15.8   Governing Law. The laws of the State of New Hampshire shall govern this Agreement.  
20       The parties hereby consent to jurisdiction of the courts of the State of New Hampshire  
21       sitting in the County of Hillsborough.

22   15.9   Amendments to this Agreement. Amendments to the terms of this Agreement shall only  
23       be effective with the prior written approval of Town Council, Developer and Planning  
24       Board.

25   15.10 Miscellaneous. The Developer acknowledges and agrees that this Agreement shall be  
26       binding upon the Developer and each of its successors or assigns as to the obligations  
27       which arise under this Agreement during their respective periods of ownership of the  
28       Project, provided that each predecessor in interest shall be released under this section

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1 only if each has procured a written acknowledgment from their immediate successor  
2 addressed to the Town that such successor is bound by the terms of this Agreement, and  
3 that this Agreement shall be enforceable by the Town Council. As and when requested by  
4 the Developer, the Town will promptly advise, in writing, the status of the Developer's  
5 obligations under this Agreement for the benefit of existing and prospective mortgagees  
6 of all or a portion of the Project and such other persons as the Developer may designate.

7 Developer also acknowledges and agrees that the Town of Merrimack, operating through  
8 its officers and employees and upon reasonable advance notice to the Developer, shall  
9 have the right to enter the property as reasonably necessary to inspect to confirm  
10 compliance with the terms of this Agreement.

11 The Developer shall not be considered to be in breach of this Agreement for so long as  
12 the Developer is unable to complete any work required hereunder due to a force majeure  
13 event or other events beyond the reasonable control of Developer. In the event that the  
14 Town believes that a breach by Developer under this Agreement exists, it shall give  
15 written notice of the same to the Developer and give the Developer a reasonable period of  
16 time to cure such breach before taking any action on the same.

17 This Agreement shall become effective at such time that a Conditional Use Permit for the  
18 Project is granted by the Planning Board of the Town of Merrimack. In the event that the  
19 Conditional Use Permit is granted, or the same is deemed granted, but a third party  
20 commences legal proceedings claiming invalidity of the Conditional Use Permit and as a  
21 result of such proceeding the Conditional Use Permit is finally adjudicated to be invalid,  
22 either in whole or in part, by decision of a court of competent jurisdiction (and all appeal  
23 periods with respect to such decision have lapsed), then this Agreement, at the option of  
24 the Developer may be terminated with notice to the Town and shall thereupon be of no  
25 further force or effect. It is expressly agreed that the Agreement may only be so  
26 terminated if the Developer abandons all efforts to construct the Project pursuant to the  
27 Conditional Use Permit by like written notice to the Town. In the event that only a part of  
28 the Conditional Use Permit is finally adjudicated to be invalid, and the Developer wishes  
29 to proceed with or authorize others to proceed with construction of the Project or other  
30 substantially similar improvements on the Site pursuant to the Conditional Use Permit, it  
31 shall give written notice of such intent to the Town and such written notice shall ratify  
32 and confirm this Agreement. The parties agree to cooperate and to act in good faith for  
33 the purpose of carrying out the provisions of this paragraph.



1  
2 STATE OF New Jersey

3 County of Essex, ss.

4 On this 10<sup>th</sup> day of April, 2008, before me, the undersigned notary public, personally  
5 appeared John Klein, proved to me through satisfactory evidence of identification, which was  
6 drivers licenses, to be the person whose name is signed on the preceding  
7 document, and acknowledged to me that he signed it voluntarily for its stated purpose, as  
8 President of CPG Holdings, LLC on behalf of CPG Partners, L.P..

9 Patricia Ardino

10 Notary Public

11 My Commission Expires

Patricia Ardino

Notary Public, State of New Jersey

My Commission Expires October 24, 2012

12 STATE OF NEW HAMPSHIRE

13 County of Hillsborough ss.

14 On this 11<sup>th</sup> day of April, 2008, before me, the undersigned notary public, personally  
15 appeared Keith Hickey proved to me through satisfactory evidence of identification, which was  
16 Self, to be the person whose name is signed on the preceding  
17 document, and acknowledged to me that he signed it voluntarily for its stated purpose, as  
18 Chairman of the Town Council of the Town of Merrimack.

19 Maureen E. Atwood

20 Notary Public

21 My Commission Expires: 9/22/09

A True Copy Attest  
MAUREEN E. ATWOOD  
NOTARY PUBLIC  
STATE OF NEW HAMPSHIRE  
My commission expires Sept. 22, 2009



MERRIMACK  
PREMIUM  
OUTLETS

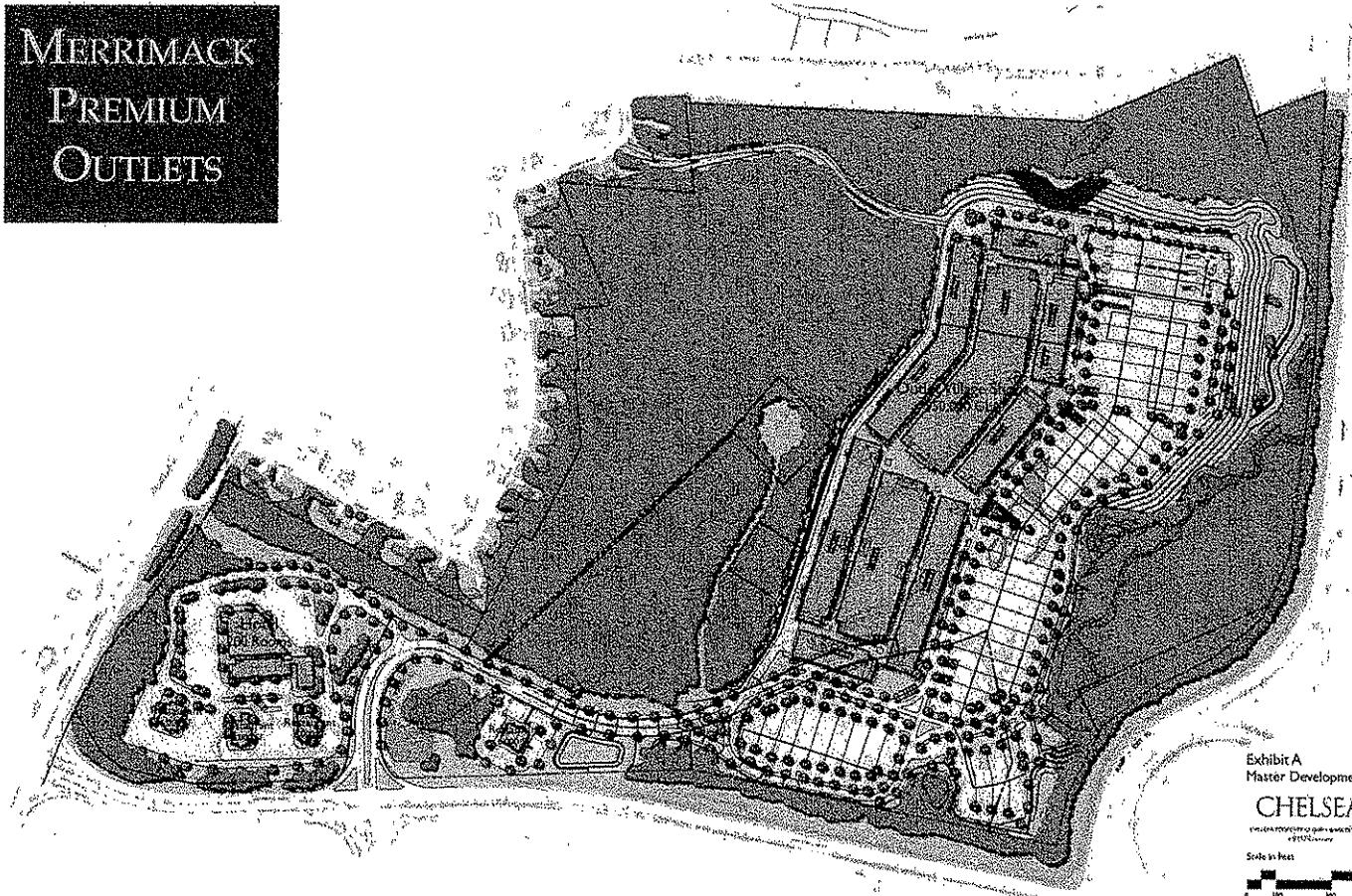


Exhibit A  
Master Development Plan

CHELSEA

THE DEVELOPMENT OF QUALITY RETAIL SPACE  
IN THE CHASE AREA

Scale in Feet



Vannoy Huggen Brustlin, Inc.

